

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 15, 2008 Session

**WILL MYERS v. HIDDEN VALLEY LAKES TRUSTEES, INC.**

**Appeal from the Chancery Court for Hickman County**  
**No. 06-134C Timothy L. Easter, Judge**

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**No. M2007-01650-COA-R3-CV - Filed July 31, 2008**

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In this appeal, Will Myers, a property owner in the Hidden Valley Lakes subdivision in Hickman County, filed a petition for writ of mandamus requesting the trial court to order the Hidden Valley Lakes property owners' association to "conduct business in accordance with Title 48, Chapters 51-68" of the Tennessee Code Annotated. Mr. Myers alleged that the property owners' association was not in compliance with applicable Tennessee statutes and its charter and bylaws. After the association provided Mr. Myers with requested financial documents and a list of property owners in the subdivision and after the trial court entered an order directing the association to conduct its meetings in compliance with its bylaws, charter, and applicable statutes, the trial court granted the association summary judgment. We affirm in part, vacate in part, and remand the case for the trial court to determine if Mr. Myers has standing to seek judicial relief to compel the association to have an independent audit conducted for the years 1996 through 2004.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part,  
Vacated in Part and Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Will Myers, *pro se* Appellant.

Kirk Vandivort, Dickson, Tennessee, for the Appellees, Hidden Valley Lakes Trustees, Inc.

**OPINION**

***I. Background***

Will Myers, an owner of property in the Hidden Valley Lakes subdivision in Hickman County, Tennessee, brought this petition for writ of mandamus requesting that the trial court order the Hidden Valley Lakes Trustees, Inc. (the "Trustees") to conduct business in accordance with Tennessee law, its charter, and the Hidden Valley Lakes Indenture as amended. Specifically, Mr.

Myers alleged that the Trustees failed to provide him a copy of its financial records as required by Tenn. Code Ann. § 48-66-201; that the Trustees failed to conduct a yearly independent audit of its financial records as required by the Hidden Valley Lakes Indentures as amended in 1994; that the Trustees conducted annual meetings without a quorum of landowner members present; that the Trustees did not deliver a written ballot to every member on proposed actions as required by Tenn. Code Ann. § 48-57-108; and that the Trustees failed to provide him with a list of members as required by Tenn. Code Ann. § 48-57-201.

In the course of the discovery that followed Mr. Myers's petition, the Trustees provided him with copies of the financial records of the property owners' association and other requested documents. The trial court subsequently entered an order stating that "as to Hidden Valley Lakes Trustees, Inc., all meetings should be conducted in compliance with the Association's By-Laws and Charter and in compliance with the laws of the State of Tennessee." After entering that order, the trial court granted the Trustees' motion for summary judgment, finding no genuine issue of material fact remaining and essentially determining that the petition was moot upon its finding that Mr. Myers admitted at a hearing before the trial court that he had been provided the documents he requested.

## ***II. Issue Presented***

Mr. Myers appeals, raising the issue, as restated, of whether the trial court erred in granting the Trustees' motion for summary judgment.

## ***III. Analysis***

### ***A. Standard of Review***

Our standard of review of a summary judgment was recently restated by the Tennessee Supreme Court as follows:

Summary judgment is to be granted by a trial court only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.03; ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993). The party seeking summary judgment bears the burden of demonstrating that no genuine issues of material fact exist and that he is entitled to judgment as a matter of law. ***Godfrey v. Ruiz***, 90 S.W.3d 692, 695 (Tenn. 2002). In reviewing the record to determine whether summary judgment requirements have been met, we must view all the evidence in the light most favorable to the non-moving party. ***Eyring v. Fort Sanders Parkwest Med. Ctr., Inc.***, 991 S.W.2d 230, 236 (Tenn. 1999); ***Byrd***, 847 S.W.2d at 210-11. We review a trial court's grant of summary judgment de novo, according no presumption of correctness to the trial court's determination. ***Blair***

*v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Godfrey*, 90 S.W.3d at 695.

*Boren v. Weeks*, 251 S.W.3d 426, 432 (Tenn. 2008).

### ***B. Statutory Requirements of Nonprofit Corporations***

The Hidden Valley Lakes property owners' association is a nonprofit corporation, subject to certain statutory record keeping and other regulatory requirements. Tennessee Code Annotated § 48-66-201 provides the following requirements regarding financial statements for nonprofit corporations:

(a) A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. If the financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. If requested in writing by any member, the corporation shall furnish such statements to the member as set out in subsection (c).

(b) If annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each requesting member within one (1) month after notice of the request; provided, that with respect to the financial statements for the most recently completed fiscal year, the statements shall be mailed to the member within four (4) months after the close of the fiscal year.

Tenn. Code Ann. § 48-66-201. Additionally, Tenn. Code Ann. § 48-66-101 provides the following further record keeping requirements:

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors as authorized by § 48-58-206(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its charter or restated charter and all amendments to it currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the

past three (3) years;

(5) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 48-66-201;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the secretary of state under § 48-66-203.

Tenn. Code Ann. § 48-66-101. Tennessee Code Annotated § 48-66-102 provides for the inspection of records by members under certain circumstances. *See Phillips v. Cumberland Mountain Retreat Prop. Owner's Ass'n.*, No. E2006-02190-COA-R3-CV, 2007 WL 2142979 (Tenn. Ct. App. E.S., filed July 27, 2007).

The record on appeal contains voluminous documentation pertaining to the property owners' association, including financial records going back to 1994 and a list of members of the association as required by Tenn. Code Ann. § 48-57-201, that were provided by the Trustees to Mr. Myers. The trial court found that at the hearing on the motion for summary judgment, Mr. Myers "acknowledged the undisputed facts exist, as the Petitioner had been provided the documents." The transcript of this hearing is not included in the record. We agree with the trial court that the Trustees provided Mr. Myers with the information required by Tennessee statute, and affirm summary judgment in favor of the Trustees on this issue.

Mr. Myers also alleged that the Trustees had conducted annual owners' meetings improperly, including doing business at meetings without a quorum present. The record contains a letter from the Trustees' president and other evidence suggesting that it had proven difficult to get enough property owners to come to the meetings to constitute a quorum. It is not clear whether a quorum was present in past meetings, but in any event, the trial court ordered that "as to Hidden Valley Lakes Trustees, Inc., all meetings should be conducted in compliance with the Association's By-Laws and Charter and in compliance with the laws of the State of Tennessee." This relief is exactly what Mr. Myers sought in his petition for writ of mandamus, in which he requested that the trial court "conduct business in accordance with Title 48, Chapters 51-68" of the Tennessee Code Annotated. We affirm the trial court's summary judgment in the Trustees' favor on this issue.

One issue remains: in 1994, the property owners' association amended its bylaws to provide the following:

Beginning in 1994, the Trustee shall have an independent audit of the financial records of Hidden Valley Lakes Trusteeship. Said audit will be conducted by an independent CPA. A copy of the findings of the independent audit shall be sent out with the annual assessments.

The parties agreed that it was undisputed that this amendment “requires a yearly CPA audit.” The financial records provided to Mr. Myers show that an independent audit was conducted by a certified public accountant in 1994 and 1995. The independent auditor’s report of the CPA found that, for both years, “[i]n our opinion, the financial statements referred to above present fairly, in all material aspects, the financial position of Hidden Valley Lakes Trustees, Inc., . . . and the results of its operations and its cash flows for the eleven months then ended, in conformity with generally accepted accounting principles.” In the years 1996 through 2004, however, no independent audit was conducted. In 2005, an independent audit was conducted, with the report reaching the same conclusion for fiscal year 2005 as quoted above for 1994 and 1995.

Mr. Myers requested that the trial court order the Trustees to have an independent audit completed for the years in which it was not done, “or in the alternative that the Court appoint an independent CPA to perform an audit for the years deemed to be sufficient in the Court’s judgment to yield an opinion and assurance of the finances of [the Trustees].” Mr. Myers did not own property in the Hidden Valley Lakes subdivision until May 12, 2005, however, and this fact raises the question of whether he has standing to seek judicial relief to compel the Trustees to have an audit done for the years prior to 2005, when he was not a member of the association. Because the trial court did not make a ruling on the issue of Mr. Myers’s standing, and because the jurisdiction of this court is appellate only, *Konvalinka v. Chattanooga-Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 357, n. 21 (Tenn. 2008), we find it appropriate to remand this case to the trial court for a determination of this issue.

#### *IV. Conclusion*

For the aforementioned reasons, the judgment of the trial court is affirmed in all respects except upon the issue of whether Mr. Myers has legal standing to seek judicial relief to compel the Trustees to have an independent CPA audit of its financial reports done for the years 1996 through 2004, and if he does have standing, whether that relief is warranted. The case is remanded to the trial court for a determination upon the standing issue. Costs on appeal are assessed to the Appellee, Hidden Valley Lakes Trustees, Inc.

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SHARON G. LEE, JUDGE